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Indeed, the whole practice of making general treaties of arbitration cannot fail to be discredited by the failure, if there is to be a failure, of the Prize Court Convention, for the cynical are sure to question the sincerity of general treaties of arbitration covering the whole field of international relations between nations which refuse to assent to this convention covering but a small part of the same field.

The PRESIDENT. Ladies and Gentlemen, the Society is very much honored, and I am sure you will all share with me in the pleasure received, from the presence here to-night of one of the greatest authorities upon international law of the continent of Europe.

I have the pleasure of introducing to you Señor Pasquale Fiore, a Senator of Italy, Professor of International Law in the University of Naples, who has prepared for us a discourse entitled "Some Considerations on the Past, Present and Future of International Law."

This paper has been translated into English and is ready for distribution. Señor Fiore will give to us now a résumé of the paper in French.

ADDRESS OF SEÑOR PASQUALE FIORE, OF ITALY,

on

SOME CONSIDERATIONS ON THE PAST, PRESENT AND FUTURE OF INTERNATIONAL LAW.*

[Translation.]

Mr. President and Gentlemen:

It stands out as one of the greatest incidents in my life that I have been able to come to America, which was the great aspiration of my compatriot, Christopher Columbus. The famous navigator has always maintained a unique fame, not so much because he discovered this country, as because he set sail determined to discover it, and firmly convinced that he would find it. The inspiration of his immortal genius continues to manifest itself through the length and breadth of your country, where all things are admirable, where all things are majestic, where unremitting, inexhaustible activity is fostered, even as was the genius who discovered it, by confidence in success.

*Translated from the French of Dr. Theodore Henckels, of Washington, D. C.

I have always admired that restless activity which characterizes your individual and national life. Those who conquer by reason of their firm belief that they will conquer, set the pace and impel others to pursue success; and in this way the activity of the American in industry, in commerce, in the development of civil and democratic institutions, in all that has to do with the happiness and prosperity of human life, has far exceeded the activity of the people of Europe. It is due to the fact that here the spirit of our Columbus enters into all your activities, believing that success is the logical result of the conviction of success and the striving for it.

At the beginning, the main object was to attain material wealth. But now, after realizing prosperity, Americans are striving for a nobler future; for the welfare of humanity, which has become the goal even of multi-millionaires, such as Carnegie, prototype of the philanthropist; the practical idealist, who has wished to devote a part of the millions that had become a burden to him, to the development of the science of international law, for the furtherance of the progress of civilization in behalf of the welfare of humanity.

Other institutions, and among these your own Society, which aims to establish right and justice as the bases of international relations, pursue the same goal.

Yourselves, even as the jurists throughout the world enlisted in the same cause, shall certainly attain that noble object, if you and all the rest, animated by the same desire, do not lose faith in the certainty that success will come.

I am firmly convinced that we will conquer.

Dear and distinguished colleagues! Your honored invitation has touched me deeply; it has set me thinking; it has drawn me toward you. I thank you for it from the bottom of my heart. I rejoice, distinguished jurists, Americans, to be with you, in order that I may present to you, from my point of view, what may be useful in providing for the juridical organization of the international society, and for developing and perfecting the concept of the law that is to govern it.

I am not able to enlarge upon many matters of great importance, at once worthy of your association and of your high standing. It is my purpose to present to you my scientific conclusions, in order that I may profit by your discussions; to submit them to your examination and to the impartial and enlightened criticism of the press. I

wish to offer my public testimony of esteem for you all, American jurists and publicists, who pursue with such great zeal and concern the noble idea of insuring the pre-eminence of law in the international society.

I hope to contribute one little stone to the construction of the great edifice, fully trusting in your fraternal kindness and discretion.

I have the honor to present to you some general considerations regarding the past, in order to explain the present and to enable us to prepare for the future of international law. It is impossible to examine in full detail a subject so complicated.

To study the present by what has taken place in the past, and to explain the causes that have prevented or retarded the development of international law and the formation of a real juridical society between the nations, it would be necessary to make a careful search of the public and private history of diplomacy; to ransack the hidden motives for innumerable acts; to interrogate the history of international relations, and disclose their secrets. In this way only can we fully understand the present and prepare for the future. Such a presentation would require volumes, and could not possibly be embodied in an address. I must confine myself to the presentation of some general considerations upon the past and the present, and then submit to you what I believe we must do with regard to the future.

How are we to explain that, having bequeathed to us admirable monuments of their doctrine in all the other branches of law, the jurists of antiquity have contributed no important works relating to international law? The answer is apparent if we remember that the concept of international law could not present itself as between the states of antiquity. The great obstacle to the concept of international law was the absence of all idea of a juridical community. This idea did not exist in Greece, where the idea of community was restricted to those belonging to the same native land.

Theocratic states denied community ties with the peoples that did not share their beliefs. The Romans recognized community only with those who belonged to the empire; and their statesmanship was inspired by the proud ambition to make imperial colonies of all the peoples. This is the reason why the true concept of international law could not take form in those times.

Jesus Christ proclaimed the unity of mankind and the fraternity of all peoples: "*Non est Judaeus, neque Graecus; non est servus nec*

liber; non est masculus, neque foemina. Omnes enim vos unum estis, in Christo Jesu." This is the true idea of humanity, wider and more complete than is presented in all the philosophies of the world.

Again, the real concept of community among all the peoples of the universe met a new obstacle in the fatal error of the Papacy, insisting that the whole world be compelled to adopt the doctrines of the Catholic Church and heresy be extirpated. A new form of dualism came to be established between the orthodox Christians and the heretics, and the most cruel wars were waged in the defense of faith. The principles of justice and humanity were trampled under foot, in the name of the religion of Christ, which is a religion of love and peace! This was the sanguinary period of the wars of religion and of intolerance, and of the persecution of the Protestants.

Let us throw a veil over the horrible war against the Albigenses, which has been called "holy," and which Chateaubriand termed "an abominable episode" of modern history. Let us also pass by the Crusades, undertaken to exterminate those who would not accept the faith. Nor shall we consider at length the famous "Inter caetera" bull (1493) by which Alexander VI granted to the King of Spain the right to seize the territories newly discovered in America, in order to spread the teachings of the Evangel.

These belong to the history of the past; but they explain in a measure why the concept of community between all the peoples of the world has been absent—absent even after Jesus Christ had proclaimed the widest and most complete idea of humanism, wider and more complete than that conceived by Buddha, by Zoroaster, or by the Greek and Roman philosophers.

The exaggerated pretensions of the Papacy provoked an opposition, which was silent at first, and later on became outspoken. This opposition began by a discussion of the respective rights of the Papacy and of the Emperor, which led to the conclusion that the power of the Emperor also came from God, who had conferred two swords wherewith to govern the Christian world, one upon the Pope and the other upon the Emperor.

Thence arose the rivalry between the two powers; and then we come to the Reformation. This is not the place to enter into a lengthy review of the long and bloody struggle, instigated by the policy of Richelieu, and continued by Mazarin. The final result was to liberate the state from subjection to the tutelage of the Church, and to make

the civil government independent of religious doctrine. The struggle had for its aim to establish liberty of conscience and the just principles of the modern state, that is, to separate the public right of the state from the authority of theology and the Bible. Our compatriot, Alberico Gentile, who must be considered as the founder of the science of international law, had directed all his efforts to the same end. To him belongs the distinction of having emancipated the science of international law from the blind authority of the Bible. He proclaimed the authority of rational principles and aimed at community of rights between the nations, in accordance with the law of nature. In the field of legal science, he accomplished what another of my compatriots, Galileo, had succeeded in accomplishing in the field of the physical sciences: emancipation from the authority of the Church.

The new principles of public law were established in the treaty of Westphalia. The recognition of the three faiths: Catholic, Lutheran and Calvinistic, consecrated by this treaty, represents the formal acknowledgment of the separation of the interests of the Church and the state. The concept of community, independent of the bond of nationality, and independent of religious belief, was recognized. It is the point of departure of modern international law and modern history.

When the independence of the states and their political autonomy were acknowledged, it became necessary to devise a system of juridical rules for their coexistence.

From the beginning it had been believed that, to safeguard the independence of each, it would be necessary to maintain a certain balance of military forces and a proportional distribution of territory to guard against the danger of preponderance and hegemony.

This false conception was the cause of the great disorder which reigned, and still reigns, within the international society, from Charles V to the Treaty of Vienna in 1815 and even to the treaties of Algeciras and Morocco.

What events and struggles, how many treaties of alliance, concluded one day and torn to shreds the next, to establish that famous balance of power—the so-called political equilibrium!

The states have done nothing but watch each other to prevent preponderance and to resist the aggrandizement of either the one or the other, in the interest, always, of safeguarding the political balance.

The history of international law is the reflection of this false conception.

Poland was made the sacrificial offering to the political balance of Europe. In my own country, in order to counter-balance the success of the principles of nationalities, the union of Savoy and of the Comté de Nice with France was demanded and accomplished.

On your own continent, Napoleon III endeavored to counter-balance the growing power of the United States by founding in Mexico the ephemeral empire of Maximilian.

The success of Prussia in annexing the duchies of Schleswig-Holstein roused the anxiety of France, because the balance was thereby disturbed. M. Thiers sounded the alarm in the address he delivered before the legislative body, May 3, 1865. He said:

We shall witness the creation of a new German empire. This empire of Charles V, which had its seat at Vienna, will now have its seat at Berlin. In defense of its own independence, in defense of the political balance of Europe which is in the interest of all, in the interest of universal society, France must resist.

Thus stands revealed the secret of European statesmanship; it explains the Franco-Prussian war, which was declared July 29, 1870; it explains subsequent events even to the time of the treaties of Algiers and Morocco. Even in Turkey, a condition of things which brings honor neither to Christianity nor to civilization is being perpetuated in the fear of a general readjustment of the political balance, which would inevitably result from the partition of the Turkish possessions in Europe.

Without indulging further in historical memories, I believe I am correct in affirming that this false conception of considering the political balance as the guarantee and the palladium of the rights of the states, explains how it has happened that the juridical organization has remained absent in the international society.

This juridical organization has been absent and will continue absent, because—and in this gentlemen, I am sure we are of one mind—in viewing the political equilibrium as the corner-stone of the life of the states and the regulation of their relations, we shall never be able to place the sovereign authority of law on a sure foundation, nor to establish international relations on the basis of justice.

The subject of political balance lends itself to all imaginable equivocations; it leaves the door open to all manner of pretexts and pretensions.

In accepting the imperious necessity of maintaining the political balance as the fundamental basis of international relations, the most perfectly elaborated juridical rules cannot lead to clear and precise solutions.

The life of the states and the secret of their governmental policy may be summarized thus: some are attempting to acquire political preponderance in order that they may be held in higher respect by the remainder; others seek the counterweight deemed necessary to safeguard their own independence and security.

In these efforts all the states are, of necessity, compelled to rely upon their military forces and to seek alliances, some attempting to gain hegemony, and the rest seeking to establish a balance of power, in order to prevent the political preponderance of any one state; in this way the struggle has been accentuated by the policy of excessive armaments; more and more the taxes of the nations are absorbed by armaments thought necessary; and we are staggered when we stop to consider and realize the cost of armed peace.

According to Sundberg, in his *Aperçus Statistiques Internationaux* (Stockholm, 1906), the expenditures for the land and sea forces of six great European Powers for the year 1906 amounted to five billion, nine hundred eighty million francs (\$1,200,000,000). This enormous total has since considerably increased each year.

Let us consider what happened, only a month ago, at London, in the House of Commons. In order to maintain the balance between the fleets of Great Britain and Germany, each of which aspires to maritime preponderance, Lord Churchill proposed new expenditures in the budget of the admiralty to maintain the naval superiority of England over Germany; and in turn, the latter, having enacted a naval program, now proposes to construct additional vessels of the *Dreadnaught* type. The French budget, presented to the Chamber of Deputies on April 10th carries an increase of eighty million francs for national defense (*Courier des Etats-Unis*, April 11, 1912).

Gentlemen! The object of your Society is to further the establishment of international relations on the basis of right and justice. Now permit me to put some questions to you:

Do you believe that, in order to attain that purpose, we must seek the basis for international relations in the political balance of power?

Are we to admit that the balance of power can be found in the balance of military strength alone?

How shall we succeed in giving juridical organization to the international society?

According to my way of viewing the problem, whose solution forces itself upon our attention, to the end that order and justice may prevail in the international society, we must free our minds of the false idea that the balance of military forces is indispensable for the protection and the security of the states. On the other hand, however, we must admit the necessity of a juridical balance; we must assure its preponderance and establish the sovereign empire of law. To this end we must bring about the juridical organization of the international society by means of regulations that shall govern all the relations between the states, and between those who belong to the international society.

It will not suffice for the complete solution of the problem, that the states alone should agree upon certain regulations that are to govern their relations. For is the international society composed only of states! Will it suffice to regulate their mutual relations only? The great society of societies, which we call *Magna Civitas* is, in truth, composed of the states as formed in the course of historical events; but we have individual man also, with his personality and his rights; moral entities, such as the people, the nation; collectivities, such as churches, and independent tribes, organized in accordance with their respective laws; but all these are not states. There are also uncivilized hordes living in their own way, which, however, we cannot think of as being outside the pale of human rights. It is evident that international law is not applicable to these as it is to civilized states. But their relations must be subject to certain rules of international law, in order to eliminate the false idea that any violent act committed against them may be looked upon as permissible.

It follows from all these considerations that the law which shall govern the international society cannot concern the states alone. It must govern and protect at once the rights and duties of the states and of the individuals; of corporate bodies—moral entities in their relations with the states and between themselves, whenever these relations concern or may concern the international society.

In order to make myself clear, let me say, gentlemen, that man as man has an individual personality, and stands in relation to the sovereignty of the state to which he belongs. As a citizen he has his public rights, his political rights in relation to the sovereign power,

and the duties incurred by virtue of those rights. In relation to other individuals, his rights and duties are determined by the civil law of the state.

Now can it be said that in his relations with humanity man loses his personality, as a drop of water loses its entity in the ocean? Or shall we say that in those relations, which in virtue of his freedom and activity he may form with sovereign powers of the various countries of the world, and with individuals of any country whatever, he has not certain rights which he may ask to have respected? And if this cannot be reasonably affirmed, can we deny that international law must also govern the rights of human personality in its relations with all sovereign powers of the earth?

To whatever race he may belong, whatever his degree of culture, whatever his color, as long as man lives in political association, even in nomadic existence, he does not lose the rights of the human personality belonging to him in accordance with international law. He may everywhere demand respect, enjoyment and exercise of these rights, on condition that he acknowledge the authority of the land, and observe the legal provisions decreed by the legislature of the state where he may happen to be.

International law must, therefore, govern and protect the international rights of man: above all the inviolability of his person, by declaring the slave-trade illicit, under whatever form it may be carried on; by declaring personal property inviolate; by declaring the right of liberty of conscience; the right to elect citizenship in any state, to renounce acquired citizenship and to elect another by complying with the conditions imposed by the legislature.

These are the international rights of man.

Have not the people certain rights, which are independent of the state and sometimes in opposition to the rights of the sovereign power? Have they not the right to modify the political constitution of the state and to repel interference in their affairs on the part of a foreign government?

Shall not international law regulate also the position of the government constituted by the people in consequence of a revolution?

Have not the nations themselves their own rights?

Shall not international law also protect the formation of national states and regulate the relations of the populations of the same nationality desiring to organize politically into a state?

Within the *Magna Civitas* we find, moreover, associations formed in virtue of liberty of conscience: the churches. These, as corporate bodies living within the confines of the state, must be amenable to the public territorial law; while, as spiritual entities constituted by the bond of a common faith, the churches may insist upon their independence in so far as concerns their internal organization and the freedom of their beliefs. Shall not international law also safeguard the freedom of the churches in so far as they are spiritual associations, organized by virtue of liberty of religious confession?

Within the *Magna Civitas* we find other associations formed by clans, living in their own way by acknowledging the authority of their chief. Shall not international law concern itself with them also in order to safeguard respect for the human personality and prevent violation of the common rights of humanity? We cannot deny to civilized states the right to occupy territories from which savages can derive no profit; but it will be necessary to determine in what manner such occupation may take place, and by what means, in order not to trample under foot the personal rights of the natives. All these matters are part of the complete problem of colonizing protectorates and spheres of influence. All things may be justified by reasons founded upon moral, economic and political interests and for the noble object of advancing civilization.

But can it be affirmed that we have the right to force civilization upon barbarians at the point of the bayonet, treating them as if they were outside the pale of humanity? Does it not come also within the sphere of international law to prevent all forms of spoliation and arbitrary conquest? I am happy to find that the representative of the United States at the Berlin conference, Mr. John A. Kasson, took this view of this question, when, in the session of January 31, 1885, he expressed himself as follows:

International law follows a line which leads resolutely to the recognition of the right of native races to dispose of themselves and of their hereditary territory as they may think best. In conformity with this principle, my government would willingly submit to a wider regulation, based upon a principle involving the voluntary consent of the natives whose territory is seized, in all cases where they may not have provoked the aggressive act.

From what I have just presented to you, gentlemen, there results this fact, that your Society, which proposes to promote the estab-

lishment of international relations on the basis of right and justice, has before it a rather wide sphere for its intellectual activity in behalf of humanity. In order to realize the juridical balance in the *Magna Civitas*, we must not confine ourselves to the doctrine of the rights of the states and the regulation of their relations. We must try to govern and protect the rights of everybody. We must determine exactly and without equivocation what each may do and must keep from doing; what is right and what is arbitrary in the attempt to regulate all questions according to the principles of justice. We must realize the juridical balance by admitting as a fundamental principle, that in the international society the individual can claim only such liberty as is compatible with the respect due to the rights belonging to all the rest.

Gentlemen, that is the problem to which you are to give all your thought if you are firmly resolved to advance the object of your society: to consolidate peace and to prevent war.

The complex question of the juridical organization of the international society can never be fully solved until we shall have determined the organs which are to proclaim the rules of common rights and to secure the necessary authority for their enforcement, and until we shall have established institutions clothed with the power to determine effectively all controversies between the states in accordance with the principles of justice.

I shall now proceed to give you my way of looking at this matter, by taking into consideration what has already been done, and what must be done—which I believe it will be useful to indicate, convinced at the same time that the measures I shall propose to that end cannot all be realized at once, but must extend over a more or less distant future. We believe that governments have entered into the right track; but it is a long road that we must follow, before we shall be able to realize what is in everybody's mind, that is, the establishment of the juridical organization of the international society.

The present is history. * * * The future must be the rational development of the historical fact. Now, gentlemen, what is this history and what is the real situation?

We must, of course, consider that up to the last century there were no institutions in existence and no juridical procedure efficient to guarantee the rights of the states, and that in consequence each of the states could find its security only in its military strength by which it could protect itself and obtain redress for every attempt made against

its rights and interests. Because of these conditions, each state found it necessary to organize large military forces to provide for its security and self-respect. Each state was compelled, moreover, continually to increase its military forces, to counterbalance the development of those of rival Powers.

Given to understand that in order to safeguard their national interests, it was necessary to rely on their military strength, and indispensable to counterbalance the military power of this or that other state, to prevent military preponderance, the people had to accept the inevitable. In all countries, therefore, expenditures for armaments have constantly increased. According to the statistical notes of Mr. Sundberg, these expenditures amounted in 1906 to one-fourth of the revenues; but no state could limit these expenditures, because no state thought itself sufficiently armed. The cost of militarism having developed into a crushing burden, a reaction took place, because of the inability of the state to maintain its military forces. It then happened that the people organized into associations, discussed the situation at congresses, and demanded that militarism be checked by substituting arbitration for war. The sentiment was voiced by every people and found response in parliaments.

To mention only a few of the important facts accomplished in your own country, I will recall to your minds that Mr. George Canning, called the Fénélon of the New World, addressed a memorial to Congress; that Mr. Blaine endorsed the same idea before the Pan American Congress; that Ladd and Thomson presented their propositions to the legislature of Massachusetts; that, on the motion of Mr. Boardman Smith, June 17, 1874, your two houses of Congress expressed their solemn judgment in these terms: "The people of the United States through the organ of their representatives in Congress, recommend the substitution of the arbitral tribunal for war."

In Europe such manifestations were no less emphatic nor less solemn. The people everywhere demanded limitation of armaments. The final result of this noble and humanitarian movement was The Hague Conference, which must be considered one of the greatest events of our times. Diplomacy had at last bowed to the people.

While proposing to find a remedy for the situation created by governmental policies, can it be said that The Hague Conference has succeeded in reaching the expected beneficent results? According to the program solemnly announced in the note of the Czar of August

12/24, 1898, the principal object of the Conference was "the maintenance of general peace and a possible reduction of excessive armaments." But, more than aught else, it was proposed to put an end to the progressive development of the actual armaments. It is painful to have to confess that none of the regulations codified are directed toward that noble goal; on the contrary, they relate primarily to war.

Gentlemen, I wish to call your especial attention to the regulations relating to the maintenance of general peace. They begin as follows: "With a view of obviating, *as far as possible* recourse to force in the relations between the States the signatory Powers agree to use their best efforts to insure the pacific settlement of international differences." (Article 1, Title I.) Note especially the words "as far as possible."

In regard to the efforts which they pledged themselves to make for peaceful settlement, the contracting Powers agreed, in so far as circumstances should permit, to have recourse to the good offices or to the mediation of one or several friendly Powers. (Article 2.)

The international commission of inquiry is referred to in Article 9, as follows:

In disputes of an international nature, involving neither honor, nor vital interests, and arising from a difference of opinion on points of fact, the contracting Powers deem it expedient and desirable that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

Let us pass to Title IV of the convention—International Arbitration.

Arbitration is recognized in a general way as the most efficient and at the same time the most equitable means of settling those controversies that can not be settled through diplomatic channels. (Article 38.) But notice how the obligation of substituting arbitration for war is regulated: "It would be *desirable* that, in disputes about the above-mentioned questions, the contracting Powers should, if the case arose, have recourse to arbitration, *in so far as circumstances will permit.*" (Article 38.)

In the matter of general arbitration treaties, the Powers reserved unto themselves the privilege of concluding such treaties for the pur-

pose of extending obligatory arbitration to all cases which *they may consider possible* to submit thereto. (Article 40.) In the numerous general arbitration treaties that have been entered into in consequence of this reservation, the obligation to submit to the arbitrators is subordinated to the condition that the question should not be one involving either the vital interests, the independence or the honor of the one or the other of the Powers to the controversy. Now, realizing that it is left to the parties to the controversy to determine whether or not the reservation is applicable to all the states, we see that the submission to arbitral jurisdiction has been left completely to the good faith of the parties themselves.

Gentlemen, I will ask if The Hague Peace Conferences that have codified the superb regulations for arbitration have met the hopes of the people, who demand that an end be put to excessive military forces by substituting arbitration for war? It being left entirely to the independent judgment of the parties interested to decide whether the question is one that can be peaceably settled by arbitration, or whether they shall have recourse to military force to settle it, have we succeeded, by the rules or arbitration, in eliminating war? Has the false conception been eradicated that the military power must ever be considered as the supreme guarantee of all right and protection? Has any one of the states that dream of attaining to hegemony and think its own view-point will under all circumstances prevail, ever renounce the right to have at its disposal the most highly trained armies and the most powerful war vessels, so that its right might triumph?

We regret to confess it, but the fact is that the problem has not been solved by the two Hague Conferences; that the disastrous situation has not been really changed; because we have not found the means by which we are to bring the progressive development of excessive armaments to an end. All the states, some of them in order to gain political preponderance, and others to insure their existence by means of the balance of power, increase their military forces in proportions hitherto unknown; they find themselves compelled to increase them and to that end they shrink from no sacrifice.

No; war has not been eliminated by the two Hague Conferences. War has sometimes been avoided, because those who might have been compelled to settle the controversy by the force of arms were not certain that they would be able to wage a victorious struggle! War

is, therefore, only postponed, because it is still necessary to prepare for war.

Gentlemen, this is history and the reality!

Bismarck, with his military spirit, while conversing with a journalist, de Houx, regarding the enormous expenditures for maintaining large permanent armies, said: "They are insurance premiums which the nations pay for the maintenance of peace." But this insurance premium which the populations have to pay—is it not a crushing burden? Gentlemen, can this be continued indefinitely? Military expenditures in our days increase at such a rate that it is not possible to foresee the day when the need for new armaments will stop. Science, which day by day perfects the agencies of attack, renders yesterday's defences obsolete. Sheer necessity demands continuous modification of the system of defense in order that the states may be able to oppose sufficient resistance to the agencies of attack, that are becoming ever more powerful. All the states are compelled to follow this fatal tendency which leads to the unceasing increase of expenditures, already devouring more than one-fourth of the revenues of each country. Can the remarkable resignation of the people in tolerating such a condition of things last indefinitely?

On the other hand, consider for a moment that complex and ominous question, which day by day, in all countries, grows more demonstrative: the so-called social question. It represents the undefined but unceasing movement on the part of the workingmen and the proletariat, clamoring for greater comfort and better treatment, greater development of the industries and commerce, so that they may more largely participate in the profit and be able to satisfy the increasing needs of life. The religious sentiment, which urged the people to tolerate privations and actual suffering in the hope of the life that is to come, has lost much of its strength and the proletariat and the working classes demand at once more comfort and more work. Will it be possible to satisfy the demands of these people and their urgent needs, if the states continue to spend the larger part of their revenues to constantly increase their armaments?

Gentlemen, there are but two ways out of the situation: Evolution or the fatal cataclysm, to which the Czar referred, in his note, when he said: "The mere thought of its horrors causes the human mind to shudder." If we are to avoid this cataclysm, the best means will be to assure to all the nations the benefits of a real and durable peace;

and first of all by stopping the progressive development of actual armaments. To this end all our efforts must be concentrated. For political preponderance must be substituted the permanence of law and of justice in international relations; the guarantee of all rights and honor must be realized, not by the military balance of power, but by the establishment of a set of juridical institutions capable of doing away with the disastrous necessity of an armed peace.

I much wish that this may result through evolution; and we may be certain of success if we are able to unite all the forces; first of all, by directing the efforts of the intellectual forces of all countries to the development of international law on the basis of justice; then through the press, which must develop the sentiment of justice in public opinion; and through the statesmen who must understand the imperious necessity of averting the calamities that are threatening the welfare of the civilized world. Everybody realizes that the development of public prosperity, of labor and commerce is paralyzed and retarded by the régime of excessive armaments and by the continual danger of economic crises, due mainly to the actual situation created by governmental policy.

The scholars of all lands must have full confidence in their powers, in the firm conviction that in the end the final dominion of the world belongs to the realm of thought and not of force.

Shall science, which has removed the false conception of the difference between classes, which has broken asunder the fetters of feudalism; which has established juridical rules for the family, the community, and the state; which through the legally constituted assembly has proclaimed to the world the inherent rights of man in relation to the king—shall science be ineffective, if it directs all its efforts to the purpose of proclaiming the inherent rights of nations and the juridical regulations for the organization of the international society?

Science, we know, has developed efficient institutions to safeguard the maintenance of order and the regular co-existence of the weak and the strong in civil life. Having been able to do that much, it should also be able to develop the means required to establish firmly the authority of law in the international society, and to compel it to be respected.

When through the press, the whole world shall have become impregnated with this reform spirit, diplomacy will then bow to the will

of the civilized populations, just as monarchs who thought themselves reigning by divine right, are now bowing to the will of the people and accept the crown from their hands.

The solution of the whole question can therefore be brought about by spreading throughout the world the just conception that might is not right; and that each state in the international society must be considered as the equal of the rest, in so far as respect for its individual rights is concerned. The whole world will have to come to the realization of the high conception of Charles Sumner who, on March 23, 1871, spoke as follows in the American Senate:

The equality of all nations, without regard to population, size or power, is an axiom of international law, as the equality of all men is an axiom of our Declaration of Independence; nothing can be done to a small or weak nation that would not be done to a large or powerful nation, or that we would not allow to be done to ourselves.

All this, gentlemen, represents only the actual situation. The future, a more or less distant future, will develop the historical fact. As for myself, I have never lost faith in progress; and ever since the publication of my first work, *Nouveau Droit International Public*, which appeared in 1865, actual events have in many respects confirmed my judgment.

Even though you were to consider my ideas as fantastic, idealistic, or simply Utopian, when I myself know that they cannot at present be actually realized, you will, nevertheless, I am sure, permit me to tell you my thoughts upon the subject.

I look upon humanity as a composite of two great republics. One of these has neither territorial confines nor any boundary lines defined by the sea, the rivers or the mountains. It includes all the populations which, bound together by the bond of civilization and their collective interests, constitute the great society of societies that I call *Magna Civitas*.

The other is composed of those individuals who, bound together by their civil, economic, social and political interests, constitute the separate states.

Neither the one nor the other of these republics can exist without a real juridical organization. It would indeed be impossible to establish a regular co-existence of the individuals constituting the one and the other of the two republics, without the law which must govern all

their activities, all their reciprocal relations, and determine also what each individual has the right to do and what he is forbidden to do. It is moreover, necessary to insure the authority of the law by means of rational institutions outside the sphere of military power, capable of repressing all violation of law and of settling according to justice the controversies that may arise among the associated members.

Remembering that in the *Magna Civitas*, there are civilized and uncivilized states, it will in the first place be necessary to establish the organization of the society of civilized states. To bring this about, they should be requested to form themselves into a *union*; institute the necessary agencies for the promulgation of their common rights and see to their enforcement; and establish institutions invested with the power of insuring respect for the common right and to settle the disputes liable to arise.

Something has been done to that effect; but, as I have just said, not enough has been done finally to solve the problem of the juridical organization of the international society. It will be necessary to eliminate political preponderance in all things, and to insure the sovereign empire of right and justice. To bring that about, we must recognize the authority of a Congress to be looked upon as the legislative organ of the states forming the union. The constitution of this Congress should, however, be subject to such modification as might be thought advisable and necessary. This Congress should be composed of the representatives of the states actually forming the union, as well as all those that may wish in the future to join that union on the basis of perfect equality, without regard to population, size or power. Recognizing that the common law of the international society must not only govern the rights and the relations of the states, but safeguard as well the rights and the interests of all those belonging to the *Magna Civitas*, it is indispensable that even the people should be represented in the Congress. In order to render the representation effective and complete, it would therefore be necessary to admit delegates elected by the populations. I shall not enter into a detailed exposition of this idea. I would refer those who wish to acquaint themselves fully with it, to my work, *Droit International Codifié*.

In order to realize the juridical organization of the international society, it would, of course, be necessary that the common law should be enacted by the members thereof, and that, in order to eliminate political preponderance, all those forming the *Magna Civitas* should, ac-

cording to their respective needs, come to an agreement in regard to that law.

In my judgment, this Congress should not be a permanent body. It should meet at certain specified periods, and also in extra session on the initiative of one state, supported by two-thirds of the states in the union, through the medium of a note explaining the utility of the convocation. The changes occurring in the course of time may render the established regulations insufficient and their modification necessary.

I now pass over to the consideration of the other agency, which I describe as a kind of executive power, and in case of need, of judicial power as well. I call it Conference. We must consider it as an agency of high administration, not invested with the right to enact regulations, nor to modify the regulations already enacted by the Congress: but solely to insure their respect and enforcement to safeguard the maintenance of the juridical organization established by the Congress.

Thus, in order to give the most rational organization to the international society, there should be established not only an agency (The Congress) intended to elaborate and enact the laws, but still another agency that would see to their enforcement (The Conference).

The Conference should be composed of :

(a) Two representatives from among those delegated by the great Powers to the Congress:

(b) Five of the representatives elected by the people to the Congress, who shall be designated by the Congress by a majority vote, before the conclusion of its labors:

(c) Representatives of the state or of the states that have a direct and actual interest in the questions to be the subject of the deliberations of the Conference.

To justify this proposition, let me call your attention to the fact that the great Powers are more competent than the other states to prevent difficulties likely to arise from the non-observance of the laws enacted by the Congress. And this is our reason for declaring that the representatives of the great Powers, always on the basis of absolute equality, should constitute the Conference. Still further inspired by the idea of eliminating the preponderance of political influences from all international questions, the popular representation at the Conference, as well as the representation of the state or states interested, whose rights also must be taken into consideration, seems indispensable, even if the right to vote in the Conference be denied them.

In my judgment, the Conference must be looked upon as the most effective agency to prevent international controversies and to render arbitration efficacious. Without entering into great detail, permit me, gentlemen, to develop my idea. I have always looked upon arbitration as the most useful institution and the greatest agency of modern civilization, with the condition, however, that it be an effective instrumentality. To this end it is necessary on the one hand that submission to arbitration shall not be left to the discretion of the parties in controversy. On the other hand, it will be necessary, in regard to such international questions as cannot be referred to arbitrators to find the juridical means for settling them without resorting to armed strength. This shall be the high aim of the Conference. It shall be the duty of the Conference to make the arbitration efficient. In case one or the other of the parties interested shall refuse to submit to arbitration, declaring that the controversy does not come within the sphere of arbitration, it shall be the duty of the Conference to decide whether or not it must submit. If we continue to leave it to the parties themselves to decide according to their individual convenience, whether or no the question is one for submission to arbitration, to what condition will this noble institution of civilization be reduced?

Again, we must recognize that there are questions of a complex nature that are not susceptible of arbitration; for instance, questions that concern the political, economic, and moral life of the states, and the complex interests of the populations. Can the question of preponderance in the Balkans, or the pretensions to dominion along the Mediterranean be submitted to arbitrators? Can we submit to arbitrators conflicts regarding the aspirations for influence in Africa, in China, or in Persia? These are the great controversies that threaten peace and may lead to the general conflagration. And, gentlemen, to settle these matters, the Conference should be invested with judicial power. In such cases it should form a kind of arbitral tribunal, but of a high and superior order.

It will devolve upon the Conference to enforce the juridical rules enacted by the Congress to maintain the juridical balance and to prevent war.

What are the means by which the deliberations of the Conference may be executed? It shall be the duty of the Congress to determine these means. It shall be within its power to declare by what means peace shall be maintained and what coercive measures may be resorted

to, in time of peace, to compel each state to respect the common law; for instance, the peaceful blockade; interruption of diplomatic relations with the states that compose the union, etc., etc. To enter into a detailed consideration of these measures would lead too far. I merely state that the Conference might decree the coercive measures defined by the Congress to insure respect for the laws it has enacted.

In my work I have elaborated the sum total of the rules and procedure for the juridical organization of the international society and for the elimination of political preponderance. On this occasion I can do no more than outline in a general way my point of view, draw your attention to the wider study of the problem which is so complex and difficult, and arouse in its behalf the assistance of your intellectual forces, greater by far than my own.

I am grateful for the opportunity to address an American audience; for you are most advantageously situated to take the initiative in the formation of the union of the civilized states, and to establish the juridical organization of their society.

The final result of the reform so greatly desired will be reached only in the distant future. The co-operation of all the forces is necessary for its accomplishment. In this country you have the noble tradition of democratic institutions. Therefore, you are rightly looked upon as the representative of the interests of democracy and the proletariat.

You have at your disposal financial means which your multi-millionaires devote to the welfare of humanity. You are in position to bring about the union of the intellectual associations of all countries, with the purpose of realizing the union of civilized states. In addition you have the majestic conception of the union on the basis of liberty, autonomy and equality, which forms the foundation of your confederation. Your government has never been a factor in the question of political preponderance; but while always defending the independence of your country, your government has ever manifested a high regard for justice and humanity. And I am convinced that the President of the United States is so situated that he may lead in this movement.

To you, then, Americans, it belongs to realize the union of the civilized states, and to insure the supremacy of law and justice in behalf of the progress of civilization and of peace.

There is an expression, with which I close all my works; it reads:

"The family was the primitive unit of society; the union of the civilized nations shall be its last unit."

Americans! I solicit your best efforts for the realization of the union of the civilized states! In this way you can do the most good for humanity; and when the noble goal is reached, humanity shall then say: America has triumphed!

THE PRESIDENT. We will now listen to a paper by Mr. Everett P. Wheeler, of New York, on "The International Regulation of Ocean Travel."

ADDRESS OF HON. EVERETT P. WHEELER, OF NEW YORK,
ON

THE INTERNATIONAL REGULATION OF OCEAN TRAVEL.

The Senate of the United States has just adopted the following resolution:

Resolved, That the President of the United States be, and he is hereby, advised that the Senate would favor treaties with England, France, Germany, and other maritime governments to regulate the course and speed of all vessels engaged in the carrying of passengers at sea, to determine the number of life-boats, rafts, searchlights, and wireless apparatus to be carried by such vessels, and to assure the use of such other equipment as shall be adequate to secure the safety of such vessels, passengers and crews.

This resolution naturally attracts the attention and calls for the consideration of the American Society of International Law. That law is in part the development of international usages which have, from time to time, come by general acquiescence to prevail among civilized nations. These usages are evidenced in the decisions of international tribunals and in the treatises of approved writers. Another source of international law is to be found in the treaties among nations which to a certain extent have codified, as it were, the law which prevailed before their adoption.

So far as these treaties deal with subjects of general importance and involve interests common to all nations, it is very desirable that they should be uniform. This uniformity can best be obtained by conference between representatives of different maritime nations, at which the delegates shall have ample opportunity to consider the subject in all its bearings and then report their conclusion for ratification by the Powers that sent them. Many such conferences, which have sometimes been called congresses, have been held. The one at The